

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF NATURAL RESOURCES**

In the Matter of the Appeal from the  
Notice of Seizure and Intent to Forfeit  
Firearm Nos. 368251 and 368252

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND  
RECOMMENDATION**

Administrative Law Judge LauraSue Schlatter conducted a telephone hearing in this matter beginning at 9:00 a.m. on Thursday, February 6, 2014.

Conservation Officer Lieutenant Phillip Seefeldt represented the Department of Natural Resources (the Department) at the hearing. Ms. Charlotte Paulson appeared on behalf of the Respondent, Shannon George Wilson, at his request. Neither party was represented by an attorney. The record closed on February 20, 2014, when the deadline for the parties to file written arguments expired.

**THE ISSUES**

(1) Whether Mr. Wilson possessed the firearms in question in violation of Minnesota law; and

(2) Whether the firearms should be returned to Mr. Wilson's mother, who is their alleged owner.

Based upon the record in this matter, the Administrative Law Judge (ALJ) makes the following:

**FINDINGS OF FACT**

1. On November 5, 2001, Special Agent (SA) Burton Rutter of the Buereau of Alcohol, Tobacco and Firearms (ATF) Fargo Field Office, received information from Conservation Officer Bruce Pfalzgraff of the Minnesota Department of Natural

Resources (Department) concerning potential violations of the Gun Control Act by Respondent Shannon George Wilson.<sup>1</sup>

2. Officer Pfalzgraff advised SA Rutter that he had recently been contacted by an informant who suggested that Mr. Wilson was hunting deer without a license. The informant also stated that Mr. Wilson had previously been convicted of assault with a deadly weapon.<sup>2</sup>

3. SA Rutter obtained computerized criminal history information which showed the following Minnesota convictions for Mr. Wilson:<sup>3</sup>

Assault, 2 <sup>nd</sup> degree, dangerous weapon	Felony	July 25, 1994
Terroristic threats	Misdemeanor	July 25, 1994
Theft	Felony	January 3, 1996
Theft of firearm	Felony	January 3, 1996
Aggravated forgery	Felony	October 5, 1998
Receiving stolen property	Felony	October 5, 1998

4. SA Rutter also noted a current Protection Order against Mr. Wilson in Beltrami County, Minnesota, restraining Mr. Wilson from contact with a former girlfriend with whom he had lived. The Protection Order was issued on March 12, 2001.<sup>4</sup>

5. On November 10, 2001, at a hunting camper belonging to Mr. Wilson, Minnesota Conservation Officers executed a state search warrant in connection with the alleged game violations. The search resulted in the recovery of evidence including firearms and ammunition. Mr. Wilson was in possession of a loaded Loewe, Spanish Model 1893 7mm Mauser caliber bolt action rifle, bearing serial number D1952 at the time the search warrant was executed. In addition, a Mossberg, Model 835, 12 gauge pump shotgun bearing serial number UM242098 was found in the camper. Mr. Wilson directed Conservations Officer Pfalzgraff and SA Rutter to the firearms. Ammunition for the firearms was also found.<sup>5</sup>

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<sup>1</sup> Exhibit (Ex.) 4 at 2, Testimony of Lieutenant Phillip Seefeldt (Test. of P. Seefeldt).

<sup>2</sup> Ex. 4 at 2.

<sup>3</sup> Ex. 4 at 8.

<sup>4</sup> Ex. 4 at 2-3.

<sup>5</sup> Ex. 4 at 2-4.

6. Mr. Wilson's mother, Charlotte Paulson, gave the rifle to Mr. Wilson as a birthday present when he was a teenager because he loved to hunt.<sup>6</sup>

7. At the time of the execution of the search warrant, on November 10, 2001, a man named Gordon David Gugel arrived at Mr. Wilson's camper while the search warrant was being executed. Mr. Gugel claimed to be the owner of the shotgun. A juvenile named Zachary Zickur stated he had brought the shotgun to Mr. Wilson's camper and that it had been used earlier that day to shoot pumpkins.<sup>7</sup>

8. After the execution of the search warrant on November 10, 2001, the ATF took custody of the firearms.<sup>8</sup>

9. In an interview with SA Rutter on December 3, 2001, Mr. Gugel again stated that he was the owner of the shotgun but that he had loaned it to Zachary Zickur whose father, Frank Zickur, had expressed an interest in buying the shotgun from Mr. Gugel. When, during the course of their conversation, SA Rutter informed Mr. Gugel that Mr. Gugel's own criminal record prohibited him from possessing a firearm, Mr. Gugel claimed that Mr. Zickur had actually completed the purchase transaction for the shotgun, but Mr. Gugel had paid for it. Mr. Gugel claimed he owned no other firearms. SA Rutter informed Mr. Gugel that if Mr. Zickur was actually a "straw purchaser" for Mr. Gugel, then Mr. Zickur would be subject to federal prosecution.<sup>9</sup>

10. On January 28, 2002, Mr. Gugel's house was searched subject to a federal search warrant after Mr. Gugel reported a burglary at his home and told local police officials that the burglar likely would have been after his guns. The search revealed numerous firearms, ammunition, drugs and drug paraphernalia.<sup>10</sup>

11. Mr. Wilson was charged and convicted under federal law with being a felon in possession of firearms and ammunition. He was sentenced on May 12, 2004 in Federal Court to the mandatory minimum sentence of 180 months (15 years).<sup>11</sup>

12. At the time Mr. Wilson was sentenced, the Minnesota Department of Natural Resources was informed by SA Rutter that the Bureau of Alcohol, Tobacco and Firearms would destroy the firearms that were confiscated on November 10, 2001.<sup>12</sup>

13. However, the ATF did not destroy the firearms. At some time subsequent to May of 2004, the firearms were returned to the Department.<sup>13</sup>

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<sup>6</sup> Ex. 8, Test. of Charlotte Paulson.

<sup>7</sup> Ex.3 at 6.

<sup>8</sup> Ex. 4 at 6.

<sup>9</sup> Ex. 4 at 16-17.

<sup>10</sup> Ex. 4 at 20-25.

<sup>11</sup> Ex. 5.

<sup>12</sup> Ex. 5.

<sup>13</sup> Test. of P. Seefeldt.

14. In September 2013, on becoming aware that it continued to be in possession of the firearms, and that Mr. Wilson had been convicted of illegal possession of the firearms, the Department determined that the firearms should properly be destroyed. It then commenced this proceeding pursuant to Minn. Stat. § 97A.223. The original Notice of Seizure was sent to Mr. Wilson at the federal prison in Greenville, Illinois on September 20, 2013.<sup>14</sup>

15. On or about September 27, 2013, Mr. Wilson appealed the seizure notice, alleging that he wished to have the rifle (No. 368252) returned to a family member who originally gave it to Mr. Wilson as a gift on his sixteenth birthday. Mr. Wilson claimed the shotgun (No. 368251) was not his but had been brought to his camper by his cousin.<sup>15</sup>

16. Mr. Wilson's appeal was forwarded to the Office of Administrative Hearings (OAH) on or about October 28, 2013.<sup>16</sup> However, when OAH attempted to contact Mr. Wilson regarding scheduling a hearing in this matter, it took several attempts to contact him because he had been moved to the Federal Correction Institution in Beaver, West Virginia.<sup>17</sup>

17. In a letter received by OAH on December 31, 2013, Mr. Wilson appointed his mother, Charlotte Paulson, to represent him at a hearing in this matter.<sup>18</sup>

18. The hearing was originally scheduled to be held on January 23, 2014 but had to be re-scheduled for February 6, 2014 because the Department failed to provide Ms. Paulson with the documents on which it was relying for the hearing.<sup>19</sup>

19. Ms. Paulson gave the rifle as a gift to her son but asserted that she continued to be its legal owner. She purchased the rifle used from old friends and did not recall whether she ever legally registered it.<sup>20</sup>

20. Ms. Paulson produced a ticket showing she had pawned the rifle in 1998.<sup>21</sup> She was not able to produce a registration or a purchase receipt for the firearm.

21. Ms. Paulson also stated that she had purchased the shotgun from its former owner, whom she thought was her brother, Frank Zickur. However, she was not clear about when she purchased the shotgun.

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<sup>14</sup> Test. of P. Seefeldt, Ex. 1.

<sup>15</sup> Ex. 2.

<sup>16</sup> Ex. 3.

<sup>17</sup> Ex. 8.

<sup>18</sup> Ex. 8.

<sup>19</sup> See In the Matter of the Appeal from the Notice of Seizure and Intent to Forfeit Firearm Nos. 368251 and 368252, OAH Docket 80-2000-31081, FIRST PREHEARING ORDER.

<sup>20</sup> Test. of C. Paulson.

<sup>21</sup> Ex. 9.

22. Ms. Paulson stated she wanted the rifle and the shotgun returned to her so that she could sell them to get back some of the money that she had spent on them. She stated she would not give them back to her son, Mr. Wilson, when he is released because she understands that he cannot legally possess a firearm.<sup>22</sup>

23. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. Minnesota law gives the ALJ and the Commissioner authority to conduct this proceeding, to consider the issues raised here, and to make findings, conclusions, and recommendations and orders, as appropriate.<sup>23</sup>

2. The Department gave proper and timely notice of the hearing, and it has also fulfilled all procedural requirements of law and rule so that this matter is properly before the Administrative Law Judge.

3. Minnesota law provides that “[a]n enforcement officer must seize . . . firearms possessed in violation of state or federal law or court order.”<sup>24</sup>

4. In 2001, Minnesota Statutes, section 609.165, subdivision 1a provided that:

Subd. 1a. Certain convicted felons ineligible to possess firearms. The order of discharge must provide that a person who has been convicted of a crime of violence, as defined in section 624.712, subdivision 5, is not entitled to ship, transport, possess, or receive a firearm until ten years have elapsed since the person was restored to civil rights and during that time the person was not convicted of any other crime of violence. Any person who has received such a discharge and who thereafter has received a relief of disability under United States Code, title 18, section 925, shall not be subject to the restrictions of this subdivision.<sup>25</sup>

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<sup>22</sup> Test. of C. Paulson.

<sup>23</sup> Minnesota Statutes, sections 14.50 and 116.072, subdivision 6.

<sup>24</sup> Minnesota Statutes, section 97A.223, subdivision 1(a) (1).

<sup>25</sup> This subdivision was amended in 2003 to make the ban on possessing firearms a lifetime ban. 2003 Minn. Laws Ch. 28, Art. 3, §3.

5. Under Minnesota law, assault in the second degree is a crime of violence.<sup>26</sup> So, Mr. Wilson's conviction of that crime on January 3, 1996, was a conviction for a crime of violence.

6. Mr. Wilson possessed a firearm before 10 years had passed from the time he was discharged from probation and his civil rights were restored. In 2001, his sentence of seven years had not yet been completed. His possession of the Spanish Model 1893 7mm Mauser caliber bolt action rifle, and the Mossberg, Model 835, 12 gauge pump shotgun were therefore in violation of state law. Both firearms were subject to seizure and forfeiture by the Department under Minnesota Statutes, section 97A.223, subdivision 1(a)(1).

7. A pawn shop receipt demonstrating that a person has previously pawned and redeemed a particular firearm is inadequate to demonstrate proof of ownership.

8. Mr. Wilson's mother was not able to provide legal proof that she was the legal owner of the rifle. She had no permit or registration for the rifle, or even a receipt for its purchase. The only proof she had was that she had pawned the rifle several years before. A pawn shop receipt alone is not adequate to prove ownership of a firearm.

9. Mr. Wilson had no proof that she was ever the owner of the shotgun.

10. The Administrative Law Judge adopts as Conclusions any Findings, which are more appropriately described as Conclusions.

11. The bases and reasons for these Conclusions are those expressed in the Memorandum that follows, and the ALJ incorporates that Memorandum into these conclusions.

Based upon these Conclusions, the Administrative Law Judge makes the following:

### RECOMMENDATION

The Administrative Law Judge recommends that the Commissioner **AFFIRM** the validity of the seizure and forfeiture of the Loewe, Spanish Model 1893 7mm Mauser caliber bolt action rifle, bearing serial number D1952, No. 368252, and the Mossberg, Model 835, 12 gauge pump shotgun bearing serial number UM242098 No. 368251, and **DISMISS** Mr. Wilson's appeal.

Dated: March 19, 2014.

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<sup>26</sup> Minnesota Statutes, section 624.712, subdivision 5.

s/LauraSue Schlatter  
LAURASUE SCHLATTER  
Administrative Law Judge

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Reported: Taped; 1 tape  
No transcript prepared

### **NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Natural Resources will make the final decision after reviewing the administrative record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions and Recommendation. Under Minnesota law,<sup>27</sup> the Commissioner may not make his final decision until after the parties have had access to this report for at least five days. During that time, the Commissioner must give each party adversely affected by this report an opportunity to file exceptions and present argument to him. Parties should contact the office of the Commissioner, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota 55155, to find out how to file exceptions or present argument.

Under Minnesota law,<sup>28</sup> the Commissioner must serve his final decision upon each party and the Administrative Law Judge by first-class mail.

### **MEMORANDUM**

There was no dispute about the validity of the seizure of the firearms in this matter. Ms. Paulson asserted that she is the actual owner of the firearms, that she wishes to have them returned to her so that she can sell them, and that she does not intend to let them fall into her son's possession in the future.

But Ms. Paulson was not able to produce proof of ownership of the rifle. She stated she purchased it informally from friends and does not recall registering it. Furthermore, she testified that she gave the rifle to her son as a gift. Ms. Paulson knew in 2001 that her son should not have had access to the rifle, yet he took it with him to his camper, which sat on her land, to go hunting. The legislature's intent to keep firearms out of the hands of people who have convictions for crimes including violence is clear. Mr. Wilson and his family failed to abide by the applicable laws concerning gun

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<sup>27</sup> Minnesota Statutes, section 14.61.

<sup>28</sup> Minnesota Statutes, section 14.62, subdivision 1.

possession. The Administrative Law Judge does not find it appropriate to overlook the technicalities of proof of ownership to find a way to return the rifle to Ms. Paulson in this case. The rifle was properly seized and should not be returned.

Ms. Paulson has even less of a claim on the shotgun. It is not clear when, if ever, she purchased the shotgun. No one at the time the shotgun was seized ever mentioned that she might be its owner. Mr. Gugel claimed at various times that he was the owner, or that Mr. Zickur was the owner. Ms. Paulson could not have purchased the shotgun after it was seized because it was in the possession of the ATF or the Department. No one has ever produced proof of ownership of the shotgun. The shotgun was properly seized and should not be returned.

**L. S.**